
TITLE 329 SOLID WASTE MANAGEMENT DIVISION**SECOND NOTICE OF COMMENT PERIOD**

LSA Document #16-204

UNDERGROUND STORAGE TANKS**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules at [329 IAC 9](#) concerning underground storage tanks. IDEM seeks comment on the affected citations listed and any other provisions of Title 329 that may be affected by this rulemaking.

HISTORY

First Notice of Comment Period: May 18, 2016, Indiana Register (DIN: [20160518-IR-329160204FNA](#)).

CITATIONS AFFECTED: [329 IAC 9-1-1](#); [329 IAC 9-1-1.1](#); [329 IAC 9-1-2](#); [329 IAC 9-1-3](#); [329 IAC 9-1-4](#); [329 IAC 9-1-5](#); [329 IAC 9-1-6](#); [329 IAC 9-1-7](#); [329 IAC 9-1-8](#); [329 IAC 9-1-9](#); [329 IAC 9-1-10](#); [329 IAC 9-1-10.6](#); [329 IAC 9-1-10.8](#); [329 IAC 9-1-11](#); [329 IAC 9-1-12](#); [329 IAC 9-1-13](#); [329 IAC 9-1-14](#); [329 IAC 9-1-14.7](#); [329 IAC 9-1-15](#); [329 IAC 9-1-15.2](#); [329 IAC 9-1-16](#); [329 IAC 9-1-17](#); [329 IAC 9-1-18](#); [329 IAC 9-1-18.5](#); [329 IAC 9-1-19](#); [329 IAC 9-1-20](#); [329 IAC 9-1-22](#); [329 IAC 9-1-23](#); [329 IAC 9-1-23.1](#); [329 IAC 9-1-23.2](#); [329 IAC 9-1-24](#); [329 IAC 9-1-24.1](#); [329 IAC 9-1-24.2](#); [329 IAC 9-1-25](#); [329 IAC 9-1-26](#); [329 IAC 9-1-27](#); [329 IAC 9-1-27.1](#); [329 IAC 9-1-27.2](#); [329 IAC 9-1-27.3](#); [329 IAC 9-1-27.8](#); [329 IAC 9-1-28](#); [329 IAC 9-1-29](#); [329 IAC 9-1-30](#); [329 IAC 9-1-31](#); [329 IAC 9-1-32](#); [329 IAC 9-1-33](#); [329 IAC 9-1-34](#); [329 IAC 9-1-34.1](#); [329 IAC 9-1-35](#); [329 IAC 9-1-35.1](#); [329 IAC 9-1-35.2](#); [329 IAC 9-1-35.5](#); [329 IAC 9-1-36](#); [329 IAC 9-1-36.5](#); [329 IAC 9-1-37](#); [329 IAC 9-1-38](#); [329 IAC 9-1-38.1](#); [329 IAC 9-1-38.7](#); [329 IAC 9-1-38.9](#); [329 IAC 9-1-39](#); [329 IAC 9-1-39.5](#); [329 IAC 9-1-40](#); [329 IAC 9-1-40.5](#); [329 IAC 9-1-41.5](#); [329 IAC 9-1-41.8](#); [329 IAC 9-1-42](#); [329 IAC 9-1-43](#); [329 IAC 9-1-44](#); [329 IAC 9-1-45](#); [329 IAC 9-1-45.5](#); [329 IAC 9-1-46](#); [329 IAC 9-1-47](#); [329 IAC 9-1-47.1](#); [329 IAC 9-1-48](#); [329 IAC 9-1-49](#); [329 IAC 9-1-50](#); [329 IAC 9-1-52](#); [329 IAC 9-2-1](#); [329 IAC 9-2-1.1](#); [329 IAC 9-2-2](#); [329 IAC 9-2-3](#); [329 IAC 9-2.1](#); [329 IAC 9-3-1.2](#); [329 IAC 9-3-1.3](#); [329 IAC 9-3-2](#); [329 IAC 9-3.1](#); [329 IAC 9-4-1](#); [329 IAC 9-4-3](#); [329 IAC 9-5-1](#); [329 IAC 9-6-1](#); [329 IAC 9-6-2.1](#); [329 IAC 9-6-2.5](#); [329 IAC 9-6-2.6](#); [329 IAC 9-6-4](#); [329 IAC 9-6-5](#); [329 IAC 9-7-1](#); [329 IAC 9-7-2](#); [329 IAC 9-7-3](#); [329 IAC 9-7-4](#); [329 IAC 9-7-5](#); [329 IAC 9-7-7](#); [329 IAC 9-8-11](#); [329 IAC 9-9](#).

AUTHORITY: [IC 13-14-8](#); [IC 13-23-1](#).

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING**Basic Purpose and Background**

An underground storage tank (UST) is a tank or a combination of tanks used to contain an accumulation of regulated substances, the volume of which, including the volume of any underground pipes connected to the tank or combination of tanks, is at least ten percent (10%) beneath the surface of the ground. The federal government regulates UST owners and operators through Subtitle I of the Solid Waste Disposal Act (SWDA). States may apply to the United States Environmental Protection Agency (U.S. EPA) for state program approval. In order for an UST program to receive approval it must comply with 42 U.S.C. 6991 and corresponding federal regulations, including 40 CFR 280, which set standards for UST ownership and operation. Indiana's state UST program, through rules found in [329 IAC 9](#), was approved by U.S. EPA on July 12, 2006.

With federal approval of the state program, UST owners and operators are subject to only one set of standards, rather than having to expend costs ensuring compliance with both federal regulations and state rules. Additionally, having an approved state program maximizes funding from U.S. EPA to assist with administration of the UST program. On July 15, 2015, U.S. EPA published revisions to 40 CFR 280 in the Federal Register (80 FR 41565). The changes established federal requirements that are similar to key portions of the Energy Policy Act of 2005. In addition, EPA added new operation and maintenance requirements and addressed UST systems deferred in the 1988 UST regulation. The changes:

- Added secondary containment requirements for new and replaced tanks and piping
- Added operator training requirements
- Added periodic operation and maintenance requirements for UST systems
- Added requirements to ensure UST system compatibility before storing certain biofuel blends
- Removed past deferrals for emergency generator tanks, field constructed tanks, and airport hydrant systems
- Updated codes of practice
- Made editorial and technical corrections

U.S. EPA has provided many resources to aid states in understanding the changes and how to reapply for an approved state program. States that do not demonstrate compliance with the updated standards and submit the

revisions to U.S. EPA by October 13, 2018, could lose federal approval of their UST program. Further information can be found at:

<http://www2.epa.gov/ust/revising-underground-storage-tank-regulations-revisions-existing-requirements-and-new>
To maintain a state approved program, [329 IAC 9](#) must be amended to be at least as stringent as 40 CFR 280.

IDEM has drafted amendments to [329 IAC 9](#) to be at least as stringent as 40 CFR 280 while ensuring compliance with applicable Indiana law and rules. This includes repealing sections of [329 IAC 9](#) that are repetitive or not as stringent as 40 CFR 280 and incorporating the standards of 40 CFR 280 to provide the technical standards and corrective action requirements for owners and operators of USTs. Additional revisions include correction and clarification of obsolete cross-references, typographical errors, inconsistencies, and simplification and clarification of existing rule language. IDEM seeks comment on the affected citations listed, including suggestions for specific language, and any other provisions of Title 329 that may be affected by this rulemaking.
[IC 13-14-9-4 Identification of Restrictions and Requirements Not Imposed under Federal Law](#)

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law.

Potential Fiscal Impact

This draft rule will not impose any requirements on regulated entities beyond what is imposed under federal law and regulation. If IDEM does not make efforts to maximize federal funding due to failure to adopt the updates, the state would be responsible for paying any deficiency of costs associated with IDEM's administration of the UST program. In addition, UST owners and operators would be subject to both federal regulations and state rules. This could result in a significant cost to the state, UST owners and operators, and the public.

Reviewing the rule for opportunities to fix typographical errors, inconsistencies, and organizational issues, to streamline and simplify the language, including incorporating reference material, and ensure the rule is in compliance with the Administrative Rules Drafting Manual should result in an enhanced ability of the regulated community to comply with requirements.

Public Participation and Work Group Information

At this time, no work group is planned for the rulemaking. If you feel that a work group or other informal discussion on the rule is appropriate, please contact Dan Watts, Rules Development Branch, Office of Legal Counsel at (317) 234-5345 or (800) 451-6027 (in Indiana).

SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD

IDEM requested public comment from May 18, 2016, through June 17, 2016, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received no comments in response to the First Notice of Comment Period.

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:

LSA Document #16-204 UST
Dan Watts
Rules Development Branch
Office of Legal Counsel
Indiana Department of Environmental Management
Indiana Government Center North
100 North Senate Avenue
Indianapolis, IN 46204-2251

- (2) By facsimile to (317) 233-5970. Please confirm the timely receipt of faxed comments by calling the Rules Development Branch at (317) 232-8922.

- (3) By electronic mail to dwatts1@idem.in.gov. To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the address indicated in this notice.**

- (4) Hand delivered to the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking.

COMMENT PERIOD DEADLINE

All comments must be postmarked, faxed, or time stamped not later than August 11, 2017. Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from Dan Watts, Rules Development Branch, Office of Legal Counsel, (317) 234-5345 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. [329 IAC 9-1-1](#) IS AMENDED TO READ AS FOLLOWS:

Rule 1. Applicability, Incorporation by Reference, and Definitions

[329 IAC 9-1-1](#) Applicability and incorporation by reference

Authority: [IC 4-22-2-21](#); [IC 13-14-8](#); [IC 13-23-1](#)

Affected: [IC 4-22-9-5](#); [IC 13-12-3-2](#); [IC 13-23](#)

Sec. 1. (a) This article applies to all owners and operators of an UST system as defined in section 49 of this rule, except as otherwise provided in subsections (b) through (d). Any UST system listed in subsection (c) shall meet the requirements of section 1.1 of this rule. Nothing in this article shall be construed to conflict with, circumvent, rescind, or repeal any authority, power, or duty possessed by the office of the state fire marshal under Indiana law: **any underground storage tank (UST) as described in 40 CFR 280.10***.

(b) The following UST systems are excluded from the requirements of this article:

(1) Any UST system holding:

(A) hazardous wastes regulated under Subtitle C (42 U.S.C. 6921 through 42 U.S.C. 6939b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901, et seq., in effect on September 30, 1996; or

(B) a mixture of such hazardous waste and other regulated substances.

(2) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 (33 U.S.C. 1342) or 307(b) (33 U.S.C. 1317(b)) of the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., in effect on October 31, 1994.

(3) Equipment or machinery that contains regulated substances for operational purposes and that may include any of the following:

(A) Hydraulic lift tanks.

(B) Electrical equipment tanks.

(4) Any UST system whose capacity is one hundred ten (110) gallons or less, except an owner and operator with two (2) or more UST systems on-site whose individual capacities are one hundred ten (110) gallons or less are not excluded if the total capacity of all tanks on-site containing the same product exceeds one hundred ten (110) gallons.

(5) Any UST system that contains a de minimis concentration of regulated substances.

(6) Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

(c) [329 IAC 9-2](#) through [329 IAC 9-4](#), [329 IAC 9-6](#), and [329 IAC 9-7](#) do not apply to any of the following types of UST systems:

(1) Wastewater treatment tank systems.

(2) Any UST system containing radioactive material that is regulated under the Atomic Energy Act of 1954, 42 U.S.C. 2011, et seq., as amended, in effect on April 26, 1996.

(3) Any UST system that is part of an emergency generator system at a nuclear power generation facility regulated by the Nuclear Regulatory Commission under 10 CFR 50, Appendix A.

(4) Airport hydrant fuel distribution systems.

(5) UST systems with field-constructed tanks.

(d) [329 IAC 9-7](#) does not apply to any UST system that stores fuel solely for use by emergency power generators, except for those installed or replaced after the effective date of the 2009 amendments.

(e) Unless specified in the documents incorporated by reference in this article, the version of documents referenced in the incorporated by reference documents is the latest version that is in effect on the date of final adoption of the incorporated by reference documents into a section of this article.

(f) Owners or operators:

~~(1) performing a task or measure before the effective date of the 2004 amendments to this article; or
(2) taking an action, such as submitting reports, plans, or notifications received by the agency on a date before the effective date of the 2004 amendments to this article;
will be governed by this article before it was amended in 2004.~~

~~(g) Owners or operators completing any requirement of this article, including:
(1) performing a task or measure on or after the effective date of the 2004 amendments to this article; or
(2) taking an action, such as submitting reports, plans, or notifications received by the agency on a date on or after the effective date of the 2004 amendments to this article;
will be governed by this article as amended in 2004.~~

(b) The technical standards and corrective action requirements for owners and operators of USTs at 40 CFR 280*, July 1, 2016, edition, are incorporated by reference with the following exceptions:

- (1) Definitions of "owner" and "operator" in 40 CFR 280.12.**
- (2) 40 CFR 280.22.**
- (3) 40 CFR 280.53.**
- (4) 40 CFR 280.60.**
- (5) 40 CFR 280.61.**
- (6) 40 CFR 280.63 through 40 CFR 280.67.**
- (7) 40 CFR 280, Subpart G.**
- (8) 40 CFR 280, Subpart H.**
- (9) 40 CFR 280, Subpart I.**

(c) When used in 40 CFR 280 as incorporated by this rule, substitute the following:

- (1) A reference to "state" means Indiana.**
- (2) A reference to "implementing agency" means the Indiana department of environmental management.**
- (3) A reference to § 280.22 means [329 IAC 9-2-2](#).**
- (4) A reference to 40 CFR 280.53 means [329 IAC 9-4-4](#).**
- (5) A reference to 40 CFR 280, Subpart F means [329 IAC 5](#).**
- (6) A reference to 40 CFR 280, Subpart G means [329 IAC 6](#).**
- (7) A reference to an October 13, 2018, compliance date means the effective date of [329 IAC 9](#).**

(d) In addition to the definitions in this section, the definitions in [IC 13-11-2](#) and 40 CFR 280.12* apply throughout this rule.

***These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204.**

(Solid Waste Management Division; [329 IAC 9-1-1](#); filed Dec 1, 1992, 5:00 p.m.: 16 IR 1062; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3683; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Aug 30, 2004, 9:35 a.m.: 28 IR 145; filed Aug 3, 2009, 1:48 p.m.: [20090902-IR-329080055FRA](#))

SECTION 2. [329 IAC 9-1-10.6](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 9-1-10.6](#) "Chemical of concern" defined

Authority: [IC 13-14-8](#); [IC 13-23-1](#)

Affected: [IC 13-23](#)

Sec. 10.6. "Chemical of concern" or "COC" means the parameter to be analyzed as a possible contaminant.

(Solid Waste Management Division; [329 IAC 9-1-10.6](#); filed Aug 30, 2004, 9:35 a.m.: 28 IR 146)

SECTION 3. [329 IAC 9-1-14.7](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 9-1-14.7](#) "Corrective action plan" defined

Authority: [IC 13-14-8](#); [IC 13-23-1](#)

Affected: [IC 13-23](#)

Sec. 14.7. "Corrective action plan" or "CAP" means the corrective action plan described under [329 IAC 9-5-7\(a\)](#) through and [329 IAC 9-5-7\(b\)](#).

(Solid Waste Management Division; [329 IAC 9-1-14.7](#); filed Aug 30, 2004, 9:35 a.m.: 28 IR 146)

SECTION 4. [329 IAC 9-1-24.2](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 9-1-24.2](#) "Ground water" defined

Authority: [IC 13-14-8](#); [IC 13-23-1](#)

Affected: [IC 13-23](#)

Sec. 24.2. "Ground water" has the meaning set forth in [327 IAC 2-1-9](#) under rules adopted by the water pollution control board: [327 IAC 2-1-9\(25\)](#).

(Solid Waste Management Division; [329 IAC 9-1-24.2](#); filed Jul 19, 1999, 12:00 p.m.: 22 IR 3690; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 5. [329 IAC 9-1-27.3](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 9-1-27.3](#) "In-place closure" defined

Authority: [IC 13-14-8](#); [IC 13-23-1](#)

Affected: [IC 13-23](#)

Sec. 27.3. "In-place closure" means a **permanent** closure where the ~~underground storage tank~~ **UST is emptied and cleaned by removing all liquids and accumulated sludges, filled with an inert material, or closed in some other manner approved by the commissioner, but is** not removed from the ground.

(Solid Waste Management Division; [329 IAC 9-1-27.3](#); filed Jul 19, 1999, 12:00 p.m.: 22 IR 3691; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 6. [329 IAC 9-1-35.5](#) IS ADDED TO READ AS FOLLOWS:

[329 IAC 9-1-35.5](#) "Permanent closure" defined

Authority: [IC 13-14-8](#); [IC 13-23-1](#)

Affected: [IC 13-23](#)

Sec. 35.5. "Permanent closure" means an UST has been emptied and cleaned by removing all liquids and accumulated sludges. Removal closure and in-place closure are types of permanent closure.

(Solid Waste Management Division; [329 IAC 9-1-35.5](#))

SECTION 7. [329 IAC 9-1-39.5](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 9-1-39.5](#) "Removal closure" defined

Authority: [IC 13-14-8](#); [IC 13-23-1](#)

Affected: [IC 13-23](#)

Sec. 39.5. "Removal closure" means a **permanent** closure where an UST ~~system~~ **is emptied and cleaned by removing all liquids and accumulated sludges and then** completely extracted from the ground.

(Solid Waste Management Division; [329 IAC 9-1-39.5](#); filed Aug 30, 2004, 9:35 a.m.: 28 IR 147)

SECTION 8. [329 IAC 9-1-52](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 9-1-52](#) "Wellhead protection area" defined

Authority: [IC 13-14-8](#); [IC 13-23-1](#)

Affected: [IC 13-23](#)

Sec. 52. "Wellhead protection area" or "WHPA" has the meaning set forth in [327 IAC 8-4.1-1](#)(27). ~~under rules adopted by the water pollution control board.~~

(Solid Waste Management Division; [329 IAC 9-1-52](#); filed Jul 19, 1999, 12:00 p.m.: 22 IR 3695; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 9. [329 IAC 9-2-2](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 9-2-2](#) Notification requirements

Authority: [IC 13-14-8](#); [IC 13-23-1](#)

Affected: [IC 13-23-3](#)

Sec. 2. (a) All notifications required to be submitted under this ~~section~~ **article** must be submitted on a form **provided by the department** and in a format prescribed by the commissioner.

(b) ~~Any person who owns~~ **The owner of** an UST system, **UST**, or tank shall ~~within thirty (30) days of owning such an UST system or tank or bringing such tank or UST system into use, submit notice a notification form to register the UST system, UST, or tank to the agency to register the tank or UST system department within thirty (30) days of becoming the owner of, or bringing into use, UST system, UST, or tank.~~ Bringing a tank or UST system "into use" means the tank or UST system, ~~contains or has~~ **UST, or tank:**

- (1) **contains or has** contained a regulated substance; and
- (2) **has** not been closed under [329 IAC 9-6](#).

~~(c) An owner required to submit notice under this section shall provide notice for each tank the owner owns. The owner may provide notice for several tanks at one (1) location using one (1) form. An owner with tanks located in more than one (1) place of operation shall submit a separate notification form for each separate place of operation.~~

~~(d) An owner required to submit notice under this section shall provide all the information required by the form provided by the agency for each tank for which notice is submitted.~~

(c) An owner required to submit a notification under this section shall provide:

- (1) a notification for each UST owned;**
- (2) complete information required on the form for each UST owned; and**
- (3) if applicable, a separate notification form for each separate place of operation at which the USTs are located.**

(d) An owner may provide notification for several USTs at one (1) location using one (1) form.

~~(e) All owners and operators of new or replaced UST systems shall certify, on each notification form submitted with original signature in ink, compliance with the following requirements:~~

- ~~(1) Installation of all tanks and piping under section 1(5) of this rule. **40 CFR 280.20*.**~~
- ~~(2) Cathodic protection of steel tanks and piping under section 1(1) and 1(2) of this rule. **40 CFR 280.20*.**~~
- ~~(3) Release detection under [329 IAC 9-7-2](#) and [329 IAC 9-7-3](#). **40 CFR 280, Subpart D*.**~~
- ~~(4) Financial responsibility under [329 IAC 9-8](#).~~

~~(f) All owners and operators of UST systems shall ensure that ~~whenever~~ **the person who** performs tank system:~~

- ~~(1) installations;~~

- (2) testing;
- (3) upgrades;
- (4) closures;
- (5) removals; and
- (6) change-in-service;

is certified by the department of homeland security, division of fire and building safety. The certified person who performs the work shall certify by original signature in ink on the notification form provided by the agency, that the work performed complies with methods specified by section 1(4) of in this rule **article and 40 CFR 280, Subpart C***.

~~(g) All owners and operators of UST systems who upgrade the tank system to meet upgrade requirements under [329 IAC 9-2-1](#) shall, within thirty (30) days of completing the upgrade, submit notice of the upgrade to the agency.~~

~~(h)~~ **(g) All owners and operators of UST systems who: shall submit a notification to the department within thirty (30) days of completing any of the following actions:**

- ~~(1) temporarily close a tank~~ **Temporary closure of an UST system under [329 IAC 9-6-5](#).** or
- ~~(2) close a tank~~ **Permanent Closure of an UST system under [329 IAC 9-6-1](#).** shall, within thirty (30) days of completing such action, submit notice of this action to the agency.
- (3) Upgrade of an UST system to meet requirements of 40 CFR 280.21*.**
- (4) Installation of a method of release detection under 40 CFR, Subpart D*.**

~~(i) All owners and operators of UST systems who install a method of release detection under [329 IAC 9-7-2](#) and [329 IAC 9-7-3](#) shall, within thirty (30) days of completing such action, submit notice of this action to the agency.~~

- ~~(j)~~ **(h) Any person who sells a facility with a regulated underground storage tank that**
- ~~(1) is being used as an UST system; or~~
 - ~~(2) will be used as an UST system;~~

shall **UST or UST system** shall notify the purchaser of such tank of the owner's **purchaser's** obligation to submit notice a **notification** under subsection (b).

~~(k) An~~ **(i) Pursuant to 42 U.S.C. 6991a, et seq., in effect on September 30, 1996, notification of the service status of the UST system must be provided to the department by the owner and or operator of an any UST system that is:**

- (1) in the ground on or after May 8, 1986; and**
- (2) not taken out of operational life on or before January 1, 1974.**

shall notify the agency of the service status of the UST system under 42 U.S.C. 6991a of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901, et seq., in effect on September 30, 1996, on a form provided by the agency for this notification.

***These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204.**

(Solid Waste Management Division; [329 IAC 9-2-2](#); filed Dec 1, 1992, 5:00 p.m.: 16 IR 1068; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3699; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Aug 30, 2004, 9:35 a.m.: 28 IR 150; errata filed Oct 7, 2004, 11:55 a.m.: 28 IR 608; filed Aug 3, 2009, 1:48 p.m.: [20090902-IR-329080055FRA](#))

SECTION 10. [329 IAC 9-2-3](#) IS ADDED TO READ AS FOLLOWS:

[329 IAC 9-2-3](#) Release detection certification of compliance

Authority: [IC 13-14-8](#); [IC 13-23-1](#)

Affected: [IC 13-23](#)

Sec. 3. The owner or operator of an UST shall demonstrate compliance with the release detection

requirements of 40 CFR 280, Subpart D* and this article by providing a certification of compliance on the form required under section 2 of this rule. The certification must demonstrate that the person who performs the work that brings the UST in compliance with 40 CFR 280, Subpart D has been certified by the office of the state fire marshal under [675 IAC 12-12](#).

***This document is incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204.**

(Solid Waste Management Division; [329 IAC 9-2-3](#))

SECTION 11. [329 IAC 9-3-2](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 9-3-2](#) Electronic reporting and submittal

Authority: [IC 13-14-8](#); [IC 13-23-1](#)

Affected: [IC 13-14-13](#); [IC 13-23](#)

Sec. 2. Documentation required to be submitted to the agency **department** by this article, with the exception of reports required under [329 IAC 9-4-4](#), may be submitted in an electronic format, **in accordance with [IC 13-14-13](#)**, as prescribed by the commissioner. Any documents submitted in an electronic format must also be submitted as a paper copy unless the commissioner makes a determination that only an electronic copy is needed.

(Solid Waste Management Division; [329 IAC 9-3-2](#); filed Aug 30, 2004, 9:35 a.m.: 28 IR 155)

SECTION 12. [329 IAC 9-5-1](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 9-5-1](#) Applicability for release response and corrective action

Authority: [IC 13-14-8](#); [IC 13-23-1](#)

Affected: [IC 13-12-3-2](#); [IC 13-23](#)

Sec. 1. ~~An~~ **The** owner and operator of a petroleum or hazardous substance UST system shall, in response to a confirmed release from the UST system, comply with the requirements of this rule unless the UST system is:

- (1) excluded under ~~[329 IAC 9-1-1\(b\)](#)~~ **40 CFR 280.10(b)***; or the UST system is
- (2) subject to corrective action requirements under Section 3004(u) (42 U.S.C. 6924(u)) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901, et seq., in effect on September 30, 1996.

***This document is incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204.**

(Solid Waste Management Division; [329 IAC 9-5-1](#); filed Dec 1, 1992, 5:00 p.m.: 16 IR 1071; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3707; errata filed Sep 10, 1999, 9:08 a.m.: 23 IR 26; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Aug 30, 2004, 9:35 a.m.: 28 IR 158)

SECTION 13. [329 IAC 9-6-2.1](#) IS ADDED TO READ AS FOLLOWS:

[329 IAC 9-6-2.1](#) Permanent closure and change-in-service

Authority: [IC 13-14-8](#); [IC 13-23-1](#)

Affected: [IC 13-12-3-2](#); [IC 13-23](#)

Sec. 2.1. (a) At least thirty (30) days before beginning permanent closure or a change-in-service, the owner or operator shall notify the department and the office of the state fire marshal of the permanent closure or change-in-service using the notification form required in [329 IAC 9-2-2\(a\)](#). If the permanent

closure or change-in-service is a part of the response to corrective action, then the notification requirements of [329 IAC 9-5](#) apply.

(b) All tanks permanently closed must be removed from the ground or closed in place and the owner or operator must conduct a site assessment in accordance with section 2.5 of this rule.

(c) Continued use of an UST to store a nonregulated substance is considered a change-in-service. Before a change-in-service, the owner and operator must empty and clean the tank by removing all liquid and accumulated sludge and conduct a site assessment in accordance with section 2.5 of this rule.

(Solid Waste Management Division; [329 IAC 9-6-2.1](#))

SECTION 14. [329 IAC 9-6-2.5](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 9-6-2.5](#) Site assessment for permanent closure or change-in-service

Authority: [IC 13-14-8](#); [IC 13-23-1](#)

Affected: [IC 13-12-3-2](#); [IC 13-23](#)

Sec. 2.5. (a) The procedure for closure is as follows:

(1) At least thirty (30) days before beginning closure, the owner and operator shall notify, using the notification form required by [329 IAC 9-2-2](#)(a), the agency and the office of the state fire marshal of the intent to close as specified by one (1) of the methods in section 1 of this rule unless such action is a part of the response to corrective action.

(2) Closure sampling and laboratory analysis with the associated detection limits for the UST system closure are required as follows:

(A) Quantity and location of soil samples for each closure method are as follows:

(i) In-place closure soil samples must be taken as described in subsection (b).

(ii) Removal closure soil samples must be taken as described in subsection (c).

(iii) Change-in-service soil samples must be taken as described in subsection (d).

(B) Quantity and location of ground water samples for each closure method are as follows:

(i) In-place closure ground water samples must be taken as described in subsection (e).

(ii) Removal closure ground water samples must be taken as described in subsection (f).

(iii) Change-in-service ground water samples must be taken as described in subsection (g).

(C) Laboratory analyses and detection limits for soil samples and ground water samples for all closure methods are as required for the chemical of concern.

(3) If, at any time during the closure process for any method of closure, a release is either suspected or detected in the backfill, native soil, or ground water, the owner or operator shall contact the agency to report within twenty four (24) hours after the release is suspected or detected.

(4) A confirmed release based on the soil and ground water samples taken at the UST removal requires the owner or operator to contact the agency to report within twenty four (24) hours after the release is confirmed if a leaking underground storage tank (LUST) incident number was not obtained under subdivision (3).

(5) A closure report must be completed and submitted to the agency within thirty (30) days after the UST removal. The closure report must include the following:

(A) The notification form provided by the agency under [329 IAC 9-2-2](#).

(B) The underground storage tank closure report. The closure report must include the following information:

(a) A site assessment for an UST system undergoing permanent closure or a change-in-service must be provided by the UST owner or operator to the department not later than thirty (30) days after completion of permanent closure or change-in-service. The site assessment must be conducted as follows:

(1) Sampling and laboratory analysis, with the associated detection limits, for soil samples and ground water samples are required for the chemical of concern in the UST system. The quantity and location of soil and ground water samples must be taken as follows:

(A) Quantity and location of soil samples for permanent closure and change-in-service as follows:

(i) In-place closure soil samples must be taken as described in section 2.6(a) of this rule.

(ii) Removal closure soil samples must be taken as described in section 2.6(b) of this rule.

(iii) Change-in-service soil samples must be taken as described in section 2.6(c) of this rule.

(B) Quantity and location of ground water samples for each permanent closure and

change-in-service must be taken as described in section 2.6(d) of this rule.

- (i) ~~For~~ **(2)** The responsible party, **owner or operator of the UST system shall supply** the following information:
- ~~(AA)~~ **(A)** The UST system facility owner or operator name **and** agency's owner identification. ~~number, address, and phone number.~~
 - ~~(BB)~~ **(B)** The name of the UST system facility contact person, owner or operator affiliation, and phone number.
 - ~~(CC)~~ **(C)** Owners or operators during the last twenty-five (25) years.
- (ii) **(3)** For the UST contractor, the following information:
- ~~(AA)~~ **(A)** UST closure contractor, company name, and address.
 - ~~(BB)~~ **(B)** The name of the person on-site during closure that is certified by the office of the state fire marshal to perform UST closure and that person's certification number.
- (iii) **(4)** For the UST site information regarding the following:
- ~~(AA)~~ **(A)** Facility name, agency's facility identification number, address, and phone number.
 - ~~(BB)~~ **(B)** Type of facility, past and current operation.
 - ~~(CC)~~ **(C)** Coverage, stating if coverage is turf, concrete, asphalt, or other.
 - ~~(DD)~~ **(D)** History of any spill reports listed by incident number.
 - ~~(EE)~~ **(E)** Site proximity to both human and environmentally sensitive areas, such as residences, schools, wells, well fields, or wellhead protection areas ~~delineated under rules of the water pollution control board at described in 327 IAC 8-4.1.~~
 - ~~(FF)~~ **(F)** Backfill and site natural soil texture.
- (iv) **(5)** A site-specific map or maps with illustrated legends and compass directions and at appropriate scale to show site details described as follows:
- ~~(AA)~~ **(A)** Drainage features, surface slope, or surface water run-off direction.
 - ~~(BB)~~ **(B)** Identified aboveground features, such as buildings, roadways, manways, pump islands, and utility and property lines.
 - ~~(CC)~~ **(C)** Identified subsurface features, such as tanks and excavation pit, piping, and utility conduits.
 - ~~(DD)~~ **(D)** Locations where samples were taken, soil borings made, and monitoring wells drilled.
 - ~~(EE)~~ **(E)** Location of active and previously closed tanks, as applicable.
 - ~~(FF)~~ **(F)** Site surroundings, such as adjacent buildings, businesses, or human and environmentally sensitive areas, such as residences, schools, wells, well fields, or wellhead protection areas ~~delineated under rules of the water pollution control board at in 327 IAC 8-4.1.~~
- (v) **(6)** Information for the ~~underground storage tank~~ **UST** being closed as follows:
- ~~(AA)~~ **(A)** The number and volume of tanks.
 - ~~(BB)~~ **(B)** Past and present contents of the tank.
 - ~~(CC)~~ **(C)** Construction material of tank.
 - ~~(DD)~~ **(D)** Construction and material of piping.
 - ~~(EE)~~ **(E)** Age and installation date of tank.
 - ~~(FF)~~ **(F)** Leak detection methods used.
 - ~~(GG)~~ **(G)** Records of the most current tank tightness test results.
 - ~~(HH)~~ **(H)** Records of any other current leak detection method results including the inventory records, ground water, or vapor monitoring results.
 - ~~(II)~~ **(I)** Information on any previously closed UST system, such as the date closed and the number, size, and product stored.
- (vi) **(7)** Physical and chemical results of the samples taken under subdivision ~~(2)~~ **(1)** as follows:
- ~~(AA)~~ **(A)** Data from analysis of soil samples presented in a tabular format.
 - ~~(BB)~~ **(B)** Data from analysis of water samples presented in a tabular format.
 - ~~(CC)~~ **(C)** A signed laboratory certificate of analysis listing analysis method, preparation method, date of sample receipt, and date of analysis.
 - ~~(DD)~~ **(D)** Proper sample identification numbers for cross-reference to UST site maps.
 - ~~(EE)~~ **(E)** Chain of custody documentation.
 - ~~(FF)~~ **(F)** Description of the sampling procedures, sampling equipment, and decontamination procedures.
 - ~~(GG)~~ **(G)** Data from analyses of used oil sampling, as applicable.
- (vii) **(8)** Miscellaneous closure documentation ~~including manifests or receipts, or both,~~ as follows:
- ~~(AA)~~ **(A)** Contaminated soil and contaminated water disposal documentation.
 - ~~(BB)~~ **(B)** Remaining product and sludge disposal documentation.
 - ~~(CC)~~ **(C)** Tank and piping disposal documentation.
- ~~(6)~~ **(b)** If one (1) or more additional tanks are discovered during a closure, the owner and operator shall:
- ~~(A)~~ **(1)** close each additional tank under this rule; and

~~(B)~~ **(2)** supply all known information on each additional tank in the ~~closure report~~. **site assessment.**

~~(7)~~ The commissioner shall require additional information if the closure report is deemed incomplete or incorrect. The commissioner shall provide in writing the reasons for requiring additional information and a list of the additional information required to be submitted. The owner and operator shall have forty five (45) days to submit the additional information to the agency, after receipt of written notification from the commissioner that additional information is required.

(c) If, at any time during the site assessment, a release is either suspected or confirmed in the backfill, native soil, or ground water, the owner or operator shall contact the agency to report the suspected or confirmed release within twenty-four (24) hours after the release is suspected or confirmed and proceed with corrective action under [329 IAC 9-5](#).

~~(8)~~ **(d)** The **permanent** closure ~~will~~ **or change-in-service** is not be considered complete until all **permanent** closure ~~report~~ **or change-in-service** requirements and **site assessment** requirements are met.

(e) If the site assessment is incomplete, the owner or operator shall be notified by the commissioner and shall have forty-five (45) days from receipt of the notice to complete the site assessment.

~~(9)~~ **(f)** If the underground storage tank **UST** contains hazardous substances, the owner and operator shall perform sampling and analyses as required for the chemical of concern.

~~(10)~~ The owner and operator shall demonstrate compliance with this section by providing a certification of compliance on the notification form under [329 IAC 9-2-2](#). The certification must demonstrate that the person that performs the work has been certified by the office of the state fire marshal under rules of the fire prevention and building safety commission at [675 IAC 12-12](#).

~~(b)~~ Soil sampling for in-place closure must be achieved as follows:

~~(1)~~ The owner and operator shall submit a site plan with proposed boring locations to the agency with the notification form under [329 IAC 9-2-2](#) and to the office of the state fire marshal for approval to request in-place closure. The accompanying map must be to scale and include the entire site. Submission of an additional map of solely the underground storage area is recommended for large sites. The boring locations should be as follows:

~~(A)~~ One (1) boring every twenty (20) feet around the tank area, with a minimum of four (4) borings.

~~(B)~~ Each boring must be within three (3) feet adjacent to the underground storage tank.

~~(2)~~ The commissioner may grant conditional approval to proceed with in-place closure of the UST system based on the following:

~~(A)~~ The location of the borings as required under subdivision (1).

~~(B)~~ Approval from the office of the state fire marshal.

~~(3)~~ After approval is received under subdivision (2), the owner and operator may proceed with soil borings that must meet the following requirements:

~~(A)~~ Soil sampling must be performed continuously using a sampling device relevant to the drilling technology used.

~~(B)~~ Borings must extend two (2) feet or greater below the elevation of the base of the underground storage tank.

~~(C)~~ If the boring depth is fifteen (15) feet or less, a minimum of two (2) soil samples are required at the following locations:

~~(i)~~ The point where a contaminant is detected.

~~(ii)~~ One (1) soil sample must be taken at the:

~~(AA)~~ midpoint; and

~~(BB)~~ bottom;

~~of the boring.~~

~~(D)~~ If the boring depth is greater than fifteen (15) feet, a minimum of three (3) soil samples are required. The most shallow soil sample must be taken one (1) foot or greater below grade. Samples must be taken where the release is suspected or detected.

~~(4)~~ Piping and dispenser sampling and analysis must be completed under subsection (c)(3) or (c)(4).

~~(5)~~ The waiver of closure sampling requirements under subsection (h) will not be granted for in-place closure.

~~(c)~~ Soil sampling for removal closure must be achieved as follows:

~~(1)~~ Soil removal is allowed as follows:

- (A) The backfill may be removed from the following to provide access to native soil for sampling:
 - (i) Tank cavity excavation.
 - (ii) Piping trenches.
 - (iii) Dispensing unit areas.
 - (iv) Remote fill pipe trenches.
- (B) Closure soil samples must be taken from the following:
 - (i) Excavated backfill under subdivision (2)(B).
 - (ii) Undisturbed native soil under subdivision (2)(A).
- (2) Each underground storage tank excavation must be sampled separately. Composite samples are not acceptable for closure. The samples must meet the following requirements:
 - (A) All samples must be discrete grab samples taken directly from the undisturbed native soil from the base and sidewalls of the excavation. The following requirements apply to samples:
 - (i) Bottom samples must meet the following requirements:
 - (AA) Soil sampling must consist of a minimum of two (2) soil samples taken within two (2) feet below both ends of each underground storage tank.
 - (BB) If the underground storage tank capacity is greater than ten thousand (10,000) gallons, one (1) additional sample must be taken within two (2) feet below the middle of the underground storage tank.
 - (ii) Sidewall samples must meet the following requirements:
 - (AA) The sidewalls must be sampled and analyzed at a rate of one (1) sample every twenty (20) feet of perimeter distance around the excavation zone.
 - (BB) If the perimeter dimension measures less than eighty (80) feet, a minimum of one (1) sample for each sidewall must be taken.
 - (CC) Sidewall samples must be taken at a point half the distance from the surface to the bottom of the underground storage tank excavation.
 - (B) Excavated materials must be staged in a separate area. Samples must be discrete grab samples taken directly from the excavated materials. Sampling of the excavated soil must occur for every fifty (50) cubic yards of material.
- (3) Native soil under piping and dispenser islands, which routinely contains regulated substances, must be sampled. All samples must be discrete grab samples. The following requirements apply to the number and location of sampling for piping and dispensers:
 - (A) Soil sampling under piping must be completed as follows:
 - (i) Soil under piping must be sampled every twenty (20) feet, or fraction thereof, along the piping run. If the piping run is less than twenty (20) feet in length, one (1) soil sample must be taken half the distance between the underground storage tank excavation and the pump or dispenser island.
 - (ii) Piping must have soil sampled under piping elbows and connectors.
 - (B) Soils under the dispenser islands must be sampled and analyzed at a rate of one (1) soil sample per dispenser.
 - (C) If the UST system has a remote fill line, the following soil samples must be collected:
 - (i) Soils under the remote fill line must be sampled and analyzed at the origin or fill area and every twenty (20) feet, or fraction thereof, from the fill area to the underground storage tank connection.
 - (ii) If the remote fill line is less than twenty (20) feet, one (1) soil sample must be taken half the distance between the fill area and the underground storage tank.
 - (D) Composite samples are not acceptable for closure.
- (4) Soil sampling under the piping and product dispenser islands are not required if the following requirements are complied with:
 - (A) All:
 - (i) piping that routinely contains product; and
 - (ii) dispensers;are located directly above the UST system that is being closed.
 - (B) The requirements of clause (A) are documented in the closure report.
- (5) During removal closure, native soil and backfill that is to be returned to the underground storage tank excavation must be sampled. The sampling must meet the following requirements:
 - (A) The exposure criteria in accordance with [IC 13-12-3-2](#).
 - (B) One (1) discrete grab sample must be taken for every fifty (50) cubic yards of native soil or backfill.
- (d) Soil sampling for change-in-service must be achieved as follows:
 - (1) The boring locations are as follows:
 - (A) One (1) soil boring every twenty (20) feet around the tank area, with a minimum of four (4) borings.
 - (B) Each soil boring must be within three (3) feet adjacent to the underground storage tank.
 - (C) Soil sampling must be performed continuously using a sampling device relevant to the drilling

technology used.

(D) Each soil boring must extend two (2) feet or greater below the elevation of the base of the underground storage tank.

(E) If the soil boring depth is fifteen (15) feet or less, a minimum of two (2) soil samples are required at the following locations:

(i) The point where a contaminant is detected.

(ii) One (1) soil sample must be taken at the:

(AA) midpoint; and

(BB) bottom;

of the soil boring.

(F) If the soil boring depth is greater than fifteen (15) feet, a minimum of three (3) soil samples are required.

The most shallow soil sample must be taken one (1) foot or greater below grade. Samples must be collected where the release is suspected or detected.

(2) Piping and dispenser sampling and analysis must be completed under subsection (c)(3) or (c)(4).

(3) The waiver of closure sampling requirements under subsection (h) will not be granted for change in service.

(e) Water samples for an in-place closure must be collected in the following quantities and locations:

(1) One (1) boring must be placed in each of the four (4) principal directions within ten (10) feet of the area most likely to have contaminated ground water.

(2) Each boring must extend to the first saturated ground water zone or to a total depth of thirty (30) feet below grade at the area of suspected or confirmed release. A water sample must be collected from each boring if ground water is present within a depth of thirty (30) feet or less.

(3) If ground water is not encountered within a depth of thirty (30) feet, an additional soil sample must be obtained at the base of the boring or a minimum depth of thirty (30) feet.

(4) A ground water sample must be collected within any area where a suspected contaminant release has occurred, or where a chemical of concern release has been substantiated through one (1) of the following:

(A) Visual staining of the soil or water.

(B) Field screening with the following:

(i) Flame ionization detector or FID.

(ii) Photo ionization detector or PID.

(iii) Field gas chromatograph or GC.

(C) Petroleum odors.

(D) Laboratory analytical results.

(5) If bedrock is encountered in a boring before a depth of thirty (30) feet is reached, and a saturated ground water zone is not encountered in the boring, an owner or operator may contact the agency for approval of alternative sampling or waiver of ground water sampling requirements. The agency may approve a waiver of ground water sampling within the bedrock if the owner or operator can demonstrate the following:

(A) A soil zone at least ten (10) feet thick existing immediately above the bedrock does not have a contaminant.

(B) A soil sample collected immediately above the bedrock does not have a contaminant.

(f) Water samples for a removal closure must be collected in the following quantities and locations:

(1) If any water is encountered in any excavation, a minimum of one (1) water sample must be appropriately collected from the water encountered.

(2) A ground water sample must be collected within any area where a suspected contaminant release has occurred, or where a chemical of concern release has been substantiated through one (1) of the following:

(A) Visual staining of the soil or water.

(B) Field screening with the following:

(i) Flame ionization detector or FID.

(ii) Photo ionization detector or PID.

(iii) Field gas chromatograph or GC.

(C) Petroleum odors.

(D) Laboratory analytical results.

(3) The sample collected in subdivision (2) must be collected from a continuously sampled boring that extends to the first saturated ground water zone or to a total depth of thirty (30) feet below grade at the area of suspected or confirmed release.

(4) If ground water is not encountered within a depth of thirty (30) feet, a soil sample must be obtained at the base of the boring.

(5) If bedrock is encountered in a boring before a depth of thirty (30) feet is reached, and a saturated ground

water zone is not encountered in the boring, an owner or operator may contact the agency for approval of alternative sampling or waiver of ground water sampling requirements. The agency may approve a waiver of ground water sampling within the bedrock if the owner or operator can demonstrate the following:

- (A) A soil zone at least ten (10) feet thick existing immediately above the bedrock does not have a contaminant.
- (B) A soil sample collected immediately above the bedrock does not have a contaminant.

(g) Water samples for a change-in-service must be collected in the following quantities and locations:

- (1) One (1) boring must be placed in each of the four (4) principal directions within ten (10) feet of the area most likely to have contaminated ground water.
- (2) Each boring must extend to the first saturated ground water zone or to a total depth of thirty (30) feet below grade at the area of suspected or confirmed release. A water sample must be collected from each boring if ground water is present within a depth of thirty (30) feet depth or less.
- (3) If ground water is not encountered within a depth of thirty (30) feet, an additional soil sample must be obtained at the base of the boring or a minimum depth of thirty (30) feet.
- (4) A ground water sample must be collected within any area where a suspected contaminant release has occurred, or where a chemical of concern release has been substantiated through one (1) of the following:
 - (A) Visual staining of the soil or water.
 - (B) Field screening with the following:
 - (i) Flame ionization detector or FID.
 - (ii) Photo ionization detector or PID.
 - (iii) Field gas chromatograph or GC.
 - (C) Petroleum odors.
 - (D) Laboratory analytical results.
- (5) If bedrock is encountered in a boring before a depth of thirty (30) feet is reached, and a saturated ground water zone is not encountered in the boring, an owner or operator may contact the agency for approval of alternative sampling or waiver of ground water sampling requirements. The agency may approve a waiver of ground water sampling within the bedrock if the owner or operator can demonstrate the following:
 - (A) A soil zone at least ten (10) feet thick existing immediately above the bedrock does not have a contaminant.
 - (B) A soil sample collected immediately above the bedrock does not have a contaminant.

(h) Closure sampling waiver requirements must be completed as follows:

- (1) The commissioner may waive closure sampling based on the following:
 - (A) The LUST incident number is assigned and the following requirements are completed:
 - (i) Closure is conducted due to a confirmed release at the site.
 - (ii) The confirmed release occurred before the request for closure.
 - (B) The initial site characterization meets the requirements of [329 IAC 9-5-5.1](#).
 - (C) The corrective action plan meets the requirements of [329 IAC 9-5-7](#).
- (2) Sites that have previous releases and are not under remediation at the time of closure are not eligible for the closure sampling waiver.

(Solid Waste Management Division; [329 IAC 9-6-2.5](#); filed Aug 30, 2004, 9:35 a.m.: 28 IR 168)

SECTION 15. [329 IAC 9-6-2.6](#) IS ADDED TO READ AS FOLLOWS:

[329 IAC 9-6-2.6](#) Site assessment sampling requirements

Authority: [IC 13-14-8](#); [IC 13-23-1](#)

Affected: [IC 13-12-3](#)

Sec. 2.6. (a) Soil sampling for an in-place closure must be conducted as follows:

- (1) To request conditional approval for in-place closure, the owner and operator shall submit a site plan with an accompanying map showing proposed boring locations to the department and to the office of the state fire marshal, using the notification form under [329 IAC 9-2-2](#) including the following:
 - (A) The map must be to scale and include the entire site.
 - (B) An additional map showing only the underground storage area must be included for sites larger than one (1) acre.
 - (C) The proposed boring locations must be as follows:
 - (i) One (1) boring every twenty (20) feet around the tank area, with a minimum of four (4) borings.

- (ii) Each boring must be within three (3) feet adjacent to the UST.
- (2) The commissioner may grant conditional approval to proceed with in-place closure of the UST system based on the following:
 - (A) The location of the borings as required under subdivision (1).
 - (B) Approval from the office of the state fire marshal.
- (3) After approval is received under subdivision (2), the owner and operator may proceed with soil borings that must meet the following requirements:
 - (A) Soil sampling must be performed continuously using a sampling device relevant to the drilling technology used.
 - (B) Borings must extend two (2) feet or greater below the elevation of the base of the UST.
 - (C) If the boring depth is fifteen (15) feet or less, a minimum of two (2) soil samples are required at the point where a contaminant is detected, one (1) each from the:
 - (i) midpoint of the boring; and
 - (ii) bottom of the boring.
 - (D) If the boring depth is greater than fifteen (15) feet, a minimum of three (3) soil samples are required. The most shallow soil sample must be taken one (1) foot or greater below grade. Samples must be taken where the release is suspected or detected.
- (b) Soil sampling for removal closure must be conducted in compliance with the following:
 - (1) Native soil samples must be taken from the following areas:
 - (A) Tank cavity excavation.
 - (B) Piping trenches.
 - (C) Dispensing unit areas.
 - (D) Remote fill pipe trenches.
 - (2) Each UST excavation must be sampled separately. Composite samples are not acceptable for removal closure. The samples must meet the following requirements:
 - (A) All samples must be discrete grab samples taken directly from the undisturbed native soil from the base and sidewalls of the excavation. The following requirements apply to samples:
 - (i) Bottom samples must meet the following requirements:
 - (AA) Soil sampling must consist of a minimum of two (2) soil samples taken within two (2) feet below both ends of each UST.
 - (BB) If the UST capacity is greater than ten thousand (10,000) gallons, one (1) additional sample must be taken within two (2) feet below the middle of the UST.
 - (ii) Sidewall samples must meet the following requirements:
 - (AA) The sidewalls must be sampled and analyzed at a rate of one (1) sample every twenty (20) feet of perimeter distance around the excavation zone.
 - (BB) If the perimeter dimension measures less than eighty (80) feet, a minimum of one (1) sample for each sidewall must be taken.
 - (CC) Sidewall samples must be taken at a point half the distance from the surface to the bottom of the UST excavation.
 - (B) Excavated materials must be staged in a separate area. Samples must be discrete grab samples taken directly from the excavated materials. Sampling of the excavated soil must occur for every fifty (50) cubic yards of material.
 - (3) Native soil under piping and dispenser islands, which routinely contains regulated substances, must be sampled. All samples must be discrete grab samples. The following requirements apply to the number and location of sampling for piping and dispensers:
 - (A) Soil sampling from under the piping must be completed as follows:
 - (i) The soil must be sampled every twenty (20) feet, or fraction thereof, along the piping run. If the piping run is less than twenty (20) feet in length, one (1) sample must be taken at half the distance between the UST excavation and the pump or dispenser island.
 - (ii) Soil must be sampled from under the piping elbows and connectors.
 - (B) Soils under the dispenser islands must be sampled and analyzed at a rate of one (1) soil sample per dispenser.
 - (C) If the UST system has a remote fill line, the following soil samples must be collected:
 - (i) Soils under the remote fill line must be sampled and analyzed at the origin or fill area and every twenty (20) feet, or fraction thereof, from the fill area to the UST connection.
 - (ii) If the remote fill line is less than twenty (20) feet, one (1) soil sample must be taken half the distance between the fill area and the UST.
 - (D) Composite samples are not acceptable for permanent closure.
 - (4) Soil sampling under the piping and product dispenser islands is not required if all dispensers and

piping that routinely contain product are located directly above the UST system that is being permanently closed by removal and the location is documented.

(5) During removal closure, native soil and backfill that is to be returned to the UST excavation must be sampled. The sampling must meet the following requirements:

(A) The exposure criteria in accordance with [IC 13-12-3-2](#).

(B) One (1) discrete grab sample must be taken for every fifty (50) cubic yards of native soil or backfill.

(c) Soil samples for a change-in-service must be taken as follows:

(1) Soil sampling must be performed continuously using a sampling device relevant to the drilling technology and used every twenty (20) feet around the tank area, with a minimum of four (4) borings as follows:

(A) Each soil boring must:

(i) be within three (3) feet of the UST; and

(ii) extend two (2) feet or greater below the elevation of the base of the UST.

(B) If the soil boring depth is fifteen (15) feet or less:

(i) two (2) soil samples must be taken where a contaminant is detected;

(ii) one (1) soil sample must be taken at the midpoint of the soil boring; and

(iii) one (1) soil sample must be taken at the bottom of the soil boring.

(C) If the soil boring depth is greater than fifteen (15) feet, three (3) soil samples are required as follows:

(i) Samples must be collected where the release is suspected or detected.

(ii) One (1) soil sample must be taken one (1) foot or greater below grade and must be the most shallow sample taken.

(2) Piping and dispenser sampling and analysis must be completed under subsection (b)(3) and (b)(4).

(d) Water samples for any permanent closure or change-in-service must be collected as follows:

(1) For any permanent closure or change-in-service, a ground water sample must be collected within any area where a suspected contaminant release has occurred, or where a chemical of concern release has been substantiated through one (1) of the following:

(A) Visual staining of the soil or water.

(B) Field screening with the following:

(i) Flame ionization detector.

(ii) Photo ionization detector.

(iii) Field gas chromatograph.

(C) Petroleum odors.

(D) Laboratory analytical results.

(2) For an in-place closure or change in service, borings are to be made as follows:

(A) One (1) boring must be placed in each of the four (4) principal directions within ten (10) feet of the area most likely to have contaminated ground water.

(B) Each boring must extend to the first saturated ground water zone or to a total depth of thirty (30) feet below grade at the area of suspected or confirmed release. A water sample must be collected from each boring if ground water is present within a depth of thirty (30) feet or less.

(C) If ground water is not encountered within a depth of thirty (30) feet, an additional soil sample must be obtained at the base of the boring or a minimum depth of thirty (30) feet.

(3) For removal closure, water sampling must be conducted as follows:

(A) If any water is encountered in any excavation, a minimum of one (1) water sample must be collected from the water encountered.

(B) The ground water sample collected in subdivision (1) must be collected from a continuously sampled boring that extends to the first saturated ground water zone or to a total depth of thirty (30) feet below grade at the area of suspected or confirmed release.

(C) If ground water is not encountered within a depth of thirty (30) feet, a soil sample must be obtained at the base of the boring.

(4) If bedrock is encountered in a boring before a depth of thirty (30) feet is reached, and a saturated ground water zone is not encountered in the boring, an owner or operator may contact the department for approval of alternative sampling or waiver of ground water sampling requirements. The department may approve a waiver of ground water sampling within the bedrock if the owner or operator can demonstrate the following:

(A) A soil zone at least ten (10) feet thick existing immediately above the bedrock does not have a contaminant.

(B) A soil sample collected immediately above the bedrock does not have a contaminant.

(e) The following conditions apply to any waiver of sampling:

(1) The commissioner may waive sampling under any of the following conditions:

(A) A LUST incident number is assigned and the following requirements are completed:

(i) Permanent closure is conducted in response to a confirmed release at the site.

(ii) The confirmed release occurred before the request for permanent closure.

(B) The initial site characterization meets the requirements of [329 IAC 9-5-5.1](#).

(C) The corrective action plan meets the requirements of [329 IAC 9-5-7](#).

(D) Bedrock was encountered during the boring as described in subsection (d)(4).

(2) Sites that have previous releases and are not under remediation at the time of permanent closure are not eligible for a sampling waiver.

(3) In-place closure sampling requirements may not be waived.

(Solid Waste Management Division; [329 IAC 9-6-2.6](#))

SECTION 16. [329 IAC 9-6-4](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 9-6-4](#) Closure records

Authority: [IC 13-14-8](#); [IC 13-23-1](#)

Affected: [IC 13-23](#)

Sec. 4. The owner and operator shall maintain records in accordance with [329 IAC 9-3-1](#), **40 CFR 280.34*** and **this article** that are capable of demonstrating compliance with closure requirements under this rule. The results of the ~~excavation-zone~~ **site** assessment required in section 2.5 of this rule must be submitted to the ~~agency~~ **department** within thirty (30) days after completion of closure or change-in-service of the UST system. Results of the ~~excavation-zone~~ **site** assessment must be maintained for at least three (3) years after completion of closure or change-in-service in one (1) of the following ways:

(1) By the owner and operator who took the UST system out of service.

(2) By the current owner and operator of the UST system site.

(3) By mailing these records to the ~~agency~~, **department**, if the records cannot be maintained at the closed facility.

***This document is incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204.**

(Solid Waste Management Division; [329 IAC 9-6-4](#); filed Dec 1, 1992, 5:00 p.m.: 16 IR 1074; filed Jul 19, 1999, 12:00 p.m.: 22 IR 3722; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Aug 30, 2004, 9:35 a.m.: 28 IR 173; errata filed Dec 2, 2004, 2:50 p.m.: 28 IR 1184)

SECTION 17. [329 IAC 9-6-5](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 9-6-5](#) Temporary closure

Authority: [IC 13-14-8](#); [IC 13-23-1](#)

Affected: [IC 13-23](#)

Sec. 5. (a) When an UST system is temporarily closed, the owner and operator shall ~~complete~~ **comply with** the following:

(1) Continue operation and maintenance of corrosion protection under [329 IAC 9-3-1-2](#), **40 CFR 280.31***.

(2) Continue operation and maintenance of any release detection under [329 IAC 9-7](#), **required by 40 CFR 280, Subpart D* and this article**, except release detection is **and release detection operation and maintenance testing and inspections under 40 CFR 280, Subparts C and D are not required** as long as the UST system is empty. The UST system is empty when all materials have been removed using commonly employed practices so that no more than:

(A) two and five-tenths (2.5) centimeters or one (1) inch of residue **remains in the system**; or

(B) three-tenths percent (0.3%) by weight of the total capacity of the UST system remains in the system.

(3) Comply with **the following requirements if a release is suspected or confirmed:**

(A) **40 CFR 280.50* through 40 CFR 280.52*.**

(B) [329 IAC 9-4](#), and

(C) [329 IAC 9-5](#), if a release is suspected or confirmed.

(4) Spill and overfill operation and maintenance testing and inspections in 40 CFR 280, Subpart C are not required if the UST system is empty.

(b) When an UST system is temporarily closed for three (3) months or longer, the owner and operator ~~also~~ shall comply with the following requirements:

(1) Leave vent lines open and functioning.

(2) Cap and secure the following:

(A) All other lines.

(B) Pumps.

(C) Manways.

(D) Ancillary equipment.

(c) When an UST system ~~has been~~ **is** temporarily closed for twelve (12) months, the following requirements must be completed:

(1) The owner and operator shall permanently close the UST system if it does not meet the:

(A) performance standards in ~~329 IAC 9-2-1~~ **40 CFR 280.20*** for new UST systems; or

(B) upgrading requirements in ~~329 IAC 9-2-1~~ **40 CFR 280.21***;

except that the spill and overfill equipment requirements do not have to be met.

(2) The owner and operator shall permanently close the ~~substandard~~ UST system **if** at the end of the temporary twelve (12) month period under ~~sections 4~~ **sections 2.5** through 4 of this rule **it does not meet performance standards or upgrade requirements.**

(3) The commissioner may grant an extension of the twelve (12) month temporary closure period based on the following:

(A) The owner and operator shall complete a site assessment under ~~section 2~~ **section 2.5** of this rule before the owner and operator may apply for an extension.

(B) The length of the extension is based on the following:

(i) The results of the site assessment under clause (A).

(ii) The owner and operator shall submit written proof that explains why permanent closure cannot take place within the twelve (12) month period of temporary closure.

(iii) The owner and operator shall submit information that explains when permanent closure will take place.

(d) The owner and operator shall demonstrate compliance with this section by providing a certification of compliance on the notification form under [329 IAC 9-2-2](#). The certification must demonstrate that the person that performs the work has been certified by the office of the state fire marshal under ~~rules of the fire prevention and building safety commission at~~ [675 IAC 12-12](#).

***These documents are incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204.**

(Solid Waste Management Division; [329 IAC 9-6-5](#); filed Jul 19, 1999, 12:00 p.m.: 22 IR 3722; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Aug 30, 2004, 9:35 a.m.: 28 IR 173)

SECTION 18. [329 IAC 9-8-11](#) IS AMENDED TO READ AS FOLLOWS:

[329 IAC 9-8-11](#) Excess liability trust fund

Authority: [IC 13-14-8](#); [IC 13-23-1](#)

Affected: [IC 13-23-4-1](#); [IC 13-23-4-2](#); [IC 13-23-9-1.3](#)

Sec. 11. (a) An owner or operator may satisfy the **financial responsibility** requirements of section 4 of this rule by participation in the excess liability trust fund under [328 IAC 1](#). **Eligibility Reimbursement from the fund** is determined by compliance with [328 IAC 1](#).

(b) An owner or operator of:

(1) twelve (12) or fewer ~~underground storage tanks~~ **USTs** shall demonstrate the ability to pay the applicable deductible amount under ~~IC 13-23-8-3; IC 13-23-9-1.3~~; or

(2) more than twelve (12) ~~underground storage tanks~~ **USTs** shall demonstrate the ability to pay two (2) times the applicable deductible amount under ~~IC 13-23-8-3; IC 13-23-9-1.3~~.

(c) The owner or operator shall use any one (1) or a combination of the following mechanisms to demonstrate the ability to pay the applicable amount under subsection (b):

~~(1) An owner or operator may satisfy the requirements of subsection (b) by obtaining~~ A letter signed by an officer of a federally insured financial institution that verifies the financial institution's commitment to issue a loan to the owner or operator, if necessary, to pay the applicable amount under subsection (b). This letter must be reviewed and updated annually by the financial institution.

~~(2) An owner or operator may satisfy the requirements of subsection (b) by obtaining~~ A certificate of deposit from a federally insured financial institution.

~~(3) An owner or operator may satisfy the requirements of subsection (b) by obtaining a letter signed by an independent certified public accountant or independent professional accountant that verifies the tangible net worth of the owner or operator is sufficient to pay the applicable amount under subsection (b). This letter must be reviewed and updated annually by the certified public accountant or professional accountant.~~

~~(4) An owner or operator may satisfy the requirements of subsection (b) by obtaining~~ **(3) Liability insurance** from an insurer or risk retention group.

~~(5) An owner or operator may satisfy the requirements of subsection (b) by obtaining~~ **(4) A surety bond.**

~~(6) An owner or operator may satisfy the requirements of subsection (b) by obtaining an~~ **(5) Irrevocable standby letter of credit issued by a federally insured financial institution.**

~~(7) An owner or operator may satisfy the requirements of subsection (b) by establishing~~ **(6) Establish** a trust fund.

~~(8) An owner or operator may satisfy the requirements of subsection (b) by obtaining a~~ **(7) Written guarantee** from a person other than the owner or operator that verifies the guarantor's ability to pay the applicable amount under subsection (b). The written guarantee must disclose the relationship between the guarantor, and the owner or operator. The guarantor shall use one (1) or more of the mechanisms under this subsection.

(d) In addition to subsection (c), local government owners or operators may use any one (1) or a combination of the following mechanisms **to satisfy the requirements of subsection (b):**

~~(1) A local government owner or operator may satisfy the requirements of subsection (b) by meeting~~ **meet** a bond rating test under section 14 of this rule. The local government owner or operator shall list the amount under subsection (b) for the "per occurrence" and "annual aggregate" amounts in the letter from the chief financial officer.

~~(2) A local government owner or operator may satisfy the requirements of subsection (b) by passing~~ **pass** the financial test specified in section 15 of this rule. The local government owner or operator shall list the amount under subsection (b) for the "per occurrence" and "annual aggregate" amounts in the letter from the chief financial officer.

~~(3) A local government owner or operator may satisfy the requirements of subsection (b) by obtaining~~ **obtain a** guarantee that conforms to section 16 of this rule. The local government owner or operator shall list the amount under subsection (b) for the "per occurrence" and "annual aggregate" amounts in the local government guarantee with standby trust made by a local government. The local government owner or operator shall list the amount under subsection (b) for the "per occurrence" and "annual aggregate" amounts in the local government guarantee without standby trust made by a local government.

~~(4) A local government owner or operator may satisfy the requirements of subsection (b) by establishing~~ **establish** a dedicated fund account that conforms to section 17 of this rule. The local government owner or operator shall list the amount under subsection (b) for the "per occurrence" and "annual aggregate" amounts in the letter from the chief financial officer.

(e) In accordance with 40 CFR 280.101*, the department shall issue a certificate of financial assurance to each eligible tank owner or operator describing the nature of the state's assumption of responsibility. The certificate of financial assurance must contain the following information:

(1) Facility name and address.

(2) Facility identification number issued by the department.

(3) Amount of funds for corrective action and compensating third parties that is assured by the fund.

(f) The owner or operator must maintain the certificate of financial assurance described in subsection

(e) on file as proof of financial responsibility in accordance with section 21 of this rule.

***This document is incorporated by reference. Copies may be obtained from the Government Publishing Office, www.gpo.gov, or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Thirteenth Floor, Indianapolis, IN 46204.**

(Solid Waste Management Division; [329 IAC 9-8-11](#); filed Jul 19, 1999, 12:00 p.m.: 22 IR 3741; errata filed Sep 10, 1999, 9:08 a.m.: 23 IR 26; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 19. THE FOLLOWING ARE REPEALED: [329 IAC 9-1-1.1](#); [329 IAC 9-1-2](#); [329 IAC 9-1-3](#); [329 IAC 9-1-4](#); [329 IAC 9-1-5](#); [329 IAC 9-1-6](#); [329 IAC 9-1-7](#); [329 IAC 9-1-8](#); [329 IAC 9-1-9](#); [329 IAC 9-1-10](#); [329 IAC 9-1-10.8](#); [329 IAC 9-1-11](#); [329 IAC 9-1-12](#); [329 IAC 9-1-13](#); [329 IAC 9-1-14](#); [329 IAC 9-1-15](#); [329 IAC 9-1-15.2](#); [329 IAC 9-1-16](#); [329 IAC 9-1-17](#); [329 IAC 9-1-18](#); [329 IAC 9-1-18.5](#); [329 IAC 9-1-19](#); [329 IAC 9-1-20](#); [329 IAC 9-1-22](#); [329 IAC 9-1-23](#); [329 IAC 9-1-23.1](#); [329 IAC 9-1-23.2](#); [329 IAC 9-1-24](#); [329 IAC 9-1-24.1](#); [329 IAC 9-1-25](#); [329 IAC 9-1-26](#); [329 IAC 9-1-27](#); [329 IAC 9-1-27.1](#); [329 IAC 9-1-27.2](#); [329 IAC 9-1-27.8](#); [329 IAC 9-1-28](#); [329 IAC 9-1-29](#); [329 IAC 9-1-30](#); [329 IAC 9-1-31](#); [329 IAC 9-1-32](#); [329 IAC 9-1-33](#); [329 IAC 9-1-34](#); [329 IAC 9-1-34.1](#); [329 IAC 9-1-35](#); [329 IAC 9-1-35.1](#); [329 IAC 9-1-35.2](#); [329 IAC 9-1-36](#); [329 IAC 9-1-36.5](#); [329 IAC 9-1-37](#); [329 IAC 9-1-38](#); [329 IAC 9-1-38.1](#); [329 IAC 9-1-38.7](#); [329 IAC 9-1-38.9](#); [329 IAC 9-1-39](#); [329 IAC 9-1-40](#); [329 IAC 9-1-40.5](#); [329 IAC 9-1-41.5](#); [329 IAC 9-1-41.8](#); [329 IAC 9-1-42](#); [329 IAC 9-1-43](#); [329 IAC 9-1-44](#); [329 IAC 9-1-45](#); [329 IAC 9-1-45.5](#); [329 IAC 9-1-46](#); [329 IAC 9-1-47](#); [329 IAC 9-1-47.1](#); [329 IAC 9-1-48](#); [329 IAC 9-1-49](#); [329 IAC 9-1-50](#); [329 IAC 9-2-1](#); [329 IAC 9-2-1.1](#); [329 IAC 9-2.1](#); [329 IAC 9-3-1.2](#); [329 IAC 9-3-1.3](#); [329 IAC 9-3.1](#); [329 IAC 9-4-1](#); [329 IAC 9-4-3](#); [329 IAC 9-6-1](#); [329 IAC 9-7-1](#); [329 IAC 9-7-2](#); [329 IAC 9-7-3](#); [329 IAC 9-7-4](#); [329 IAC 9-7-5](#); [329 IAC 9-7-7](#); [329 IAC 9-9](#).

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